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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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01/23/2004

John L. Featherstone

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MORRISON & FOERSTER LLP
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EXAMINER

PHASGE, ARUN S

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

01/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claim 54 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins of record for reasons of record.

Section [0023] of the instant specification states, “[0023] In one embodiment of this aspect of the present invention, the pH of the solution remains constant. An exemplary constant pH of this solution is in the range of about 1 to about 5, about 2 to about 4, and preferably about 1.5 to about 3.” The Higgins patent would maintain the pH constant over this range.

Claims 35-47, 49-52 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins as applied to claims above, and further in view of Cardwell of record for reasons of record.

Response to Arguments

Applicant's arguments filed 9/19/08 have been fully considered but they are not persuasive.

Applicants argue that the Higgins patent does not teach that the pH of the solution remains constant. The continual removal of the excess HCl would read upon the scope of the instant claims, because as discussed above, the constant pH is given as a range and not a single pH value.

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Applicants further argue that “One of ordinary skill in the art would not have had a reasonable expectation of success in practicing the claimed invention in view of the disclosure of Higgins. The methods taught by Higgins rely upon the continuous removal of HCl from the processed solution to produce the desired manganese products. Based, in part on the passage discussed above, one of ordinary skill in the art would not have reasonably expected a process like the one encompassed by claim 54 to produce successfully manganese metal and manganese dioxide without the continuous removal of HCl.”

The continuous removal of HCl would read upon the step or as claimed herein the result of maintaining the pH of the solution constant. Furthermore, the claims as presently recited do not close the claims to further steps or processes since “comprising” is used.

Accordingly, the claims stand rejected.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Phasge whose telephone number is (571) 272-1345. The examiner can normally be reached on MONDAY-THURSDAY, 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arun S. Phasge/
Primary Examiner, Art Unit 1795

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